

## Bur. of Consumer Financial Protection

## § 1010.212

requires lot owners to use the central water system. If this document is furnished elsewhere in the Statement of Record, reference to it may be made here.

(b) *Sewer.* (1) State the estimated cost to the developer of the central sewer system.

(2) If sewage disposal is to be by individual on-site systems, furnish a letter from the local health authorities giving general approval to the use of these systems in the subdivision or giving specific approval for each and every lot.

(3) If sewage disposal is to be through a central system which is owned and operated by a governmental division, or by an entity whose operations are regulated by a governmental agency but which is not affiliated with, or under the control of, the developer, furnish a letter from the entity that it will provide this service and that its treatment facilities have the capacity to serve the anticipated population of the subdivision or how many homes or connections it can and will serve.

(4) Furnish a copy of any permits obtained by the developer or any entity affiliated with or under the control of the developer, for the construction and operation of the central sewer system or construction and use of any other method of sewage disposal contemplated for the subdivision except those to be obtained by individual lot owners at a later date.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system or other system for which the developer is responsible, and any future expansion, has been posted, furnish a copy of the document.

(6) Furnish a copy of any membership agreement of contract which allows, or requires, the lot owners to use the central system. If this document is furnished elsewhere in the Statement of Record, it may be included here by reference.

(c) *Electricity.* Give an estimate of the total construction cost to be expended by the developer and submit any instrument providing financial assurance of completion of the facilities which has been posted by the developer.

(d) *Telephone.* Give an estimate of the total construction cost to be expended by the developer and submit a copy of any instrument providing financial assurance of the completion of the facilities which has been posted by the developer.

### § 1010.212 Financial information.

(a) *Financing of improvements.* Describe the financing plan that is to be used in financing on-site or off-site improvements proposed in the Statement of Record.

(b) Complete the following format (If the subdivision or common promotional plan contains, or will contain, 1000 or more lots, furnish this information in its entirety. If the subdivision or common promotional plan contains, or will contain, less than 1,000 lots, only paragraphs (b)(3)(iii) and (iv) of this section need be completed.)

(1) Estimated date for full completion of amenities

(2) Projected date for complete sell out of subdivision

(3) Cost and expense recap for lots included in this Statement of Record:

(i) Land acquisition cost or current fair market value of land.

(ii) Development and improvement costs (include the estimated cost of such items as roads, utilities, and amenities which the developer will incur).

(iii) Estimated marketing and advertising costs.

(iv) Estimated sales commission.

(v) Interest (include cost in financing the land purchase, improvements, or other borrowings).

(vi) Estimated other expenses (include general costs, administrative costs, profit, etc.).

(vii) Total.

(4) Total land sales revenue:

(i) Estimated total land sales income.

(ii) Estimated other income.

(iii) Total income.

(c) *Financial statements.* (1) Submit a copy of the developer's financial statements for the last full fiscal year. These statements shall be prepared in accordance with generally accepted accounting principles as prescribed by the Financial Accounting Standards Board and generally accepted auditing

standards as prescribed by the American Institute of Certified Public Accountants, and shall be audited by an independent licensed public accountant. They shall include a balance sheet, a statement of profit and loss, a statement of changes in financial condition and a certified opinion by the accountant. The statements shall be no more than six months old on the date the Statement of Record is submitted.

(2) If the audited statements are more than six months old at the date of submission of the Statement of Record, or if the last full fiscal year has ended within the last 90 days and audited Statements are not yet available, the developer may submit a copy of the audited statements for the previous full fiscal year and supplement them with unaudited, interim statements so that the financial information is no more than six months old on the date that the Statement of Record is submitted. The interim statements may be prepared by company personnel but must contain a balance sheet, a statement of profit and loss and a statement of changes in financial condition and be prepared in accordance with generally accepted accounting principles.

(d) *Annual report.* (1) Each year after the initial effective date, the developer shall submit a copy of its latest financial statements. These statements must meet the standards set out in § 1010.212(c)(1), unless the developer has qualified for an exception under § 1010.212(e), and must be submitted within 120 days after the close of the developer's fiscal year.

(2) If a developer has submitted its latest statements with a consolidated filing since the close of its fiscal year and prior to the end of the 120 day period, a second submission of the statements to comply with this section is not necessary.

(3) If the developer no longer has an active sales program on the date this report is due, the information set forth in § 1010.310(c)(7)(iii) may be furnished in lieu of this report.

(e) *Exceptions.* (1) If the developer does not have audited financial statements and the criteria in one of the following exceptions are met, statements need not be audited and certified but

must meet all of the other requirements set forth in paragraphs (c)(1) and (2) of this section.

(2) The term “conveys title free of any mortgage or lien” in these exceptions is not intended to prohibit the taking of an instrument as security for the lot purchase price after title is conveyed. For the purposes of these exceptions, these definitions shall apply:

(i) *Deed* shall mean a warranty deed, or its equivalent, which conveys title free and clear of liens and encumbrances.

(ii) *Assurance of Title Agreement* shall mean a legal arrangement whereby the purchaser is guaranteed a deed upon payment of no more than the full purchase price of the lot (*e.g.* subdivision trust). In addition to a copy of any Assurance of Title Agreement, the Director may require additional documentation such as an attorney's opinion letter to assure that the purchaser's title is fully protected.

(iii) *Date of contract* shall mean the date on which the contract or agreement is signed by the purchaser.

(iv) *Escrow or trust account as to down payments and deposits* shall mean an account, established in accordance with local real estate laws or regulations, which assures the return to the purchaser of any monies paid in the event title is not delivered to the purchaser in accordance with the terms of the contract.

(3) The exceptions are:

(i) The aggregate sales price of all lots offered pursuant to a common promotional plan equals \$500,000.00 or less; or

(ii) Each of the following conditions of paragraphs (e)(3)(ii)(A) and (B) of this section are met, plus the conditions of one of paragraphs (e)(3)(ii)(C), (D), or (E) of this section:

(A) Down payments and deposits are held in an escrow or trust account.

(B) The contract provides for delivery of a deed which conveys title free of any mortgage or lien within 180 days of the signing of the contract. (In lieu of delivery of a deed, the developer may submit to ILSRP an Assurance of Title Agreement.)

(C) The aggregate sales prices of all lots offered pursuant to a common promotional plan is at least \$500,000 but less than \$1,500,000.

(D) All facilities, utilities and amenities proposed by the developer in the Property Report or sales contract have been completed so that the lots in the Statement of Record are immediately usable for the purpose for which they are sold.

(E) (1) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities proposed by the developer in the Property Report and sales contract so that all lots included in the Statement of Record will be usable for the purpose for which they are sold by the dates set out in the Property Report, and;

(2) The developer has made financial arrangements, such as the posting of surety bonds (corporate bonds or individual notes or bonds are not acceptable), irrevocable letters of credit or the establishment of escrow or trust accounts, which assure completion of all facilities, utilities and amenities proposed by the developer in the Property Report or contract.

(f) *Newly-formed entity.* If the developer is newly formed or has not had any significant operating experience, an audited or unaudited balance sheet and statements of receipts and disbursements of funds may be submitted.

(g) *Use of parent company statements.*

(1) If the developer is a subsidiary company and does not have audited financial statements, the Director may permit the use of the audited and certified statements of the parent company: *Provided*, That those statements are accompanied by an unconditional guaranty that the parent shall perform and fulfill the obligations of the subsidiary. If this procedure is adopted, the developer shall submit the following:

(i) The audited and certified financial statements of the parent company, together with interim statements if necessary, which comply with § 1010.212(c).

(ii) A properly executed guaranty in a form acceptable to the Director.

(2) In cases described in paragraph (g)(1) of this section, the disclosure information required in § 1010.112 shall be appropriately amended to reference the parent company and not the developer

and must include a statement to the effect that the developer's parent company (insert name) has entered into an unconditional guaranty to perform and fulfill the obligations of the developer.

(h) *Opinions.* If the accountant qualifies or disclaims his opinion, the Director may accept the statements and require such additional disclosure as the Director deems necessary in the public interest or for the protection of purchasers.

(i) *Copies for prospective purchasers.* Copies of the financial statements filed with the Statement of Record shall be made available to prospective purchasers upon request. A supply of the latest submitted statements shall be maintained at whatever place, or places, as is necessary to allow immediate delivery upon request by a prospective purchaser. These statements shall contain financial information only and shall not include any promotional material such as that usually set forth in annual reports.

(j) *Change from audited to unaudited statements.* (1) Developers who file audited statements must continue with audited statements throughout the duration of the registration unless, at a later date, the developer submits amendments which demonstrate to the satisfaction of the Director that it then qualifies for an exception from audited statements under paragraph (e)(3)(ii) of this section. For purposes of paragraph (e)(3)(ii)(C) of this section, the Director will consider the aggregate sales prices of only the lots yet to be sold, and may consider whether any additions to the subdivisions or reacquisitions of lots already sold would be likely to cause the dollar limits to be exceeded.

(i) The aggregate sales prices of the lots yet to be sold in the subdivision has been reduced to less than \$1,500,000.00, and that it will not exceed this amount through further additions to the subdivision, or through the reacquisition of lots already sold, and;

(ii) The sales contract provides for delivery of a deed within 120 days of the date of the contract which conveys title free and clear of any mortgage or lien or the developer files an Assurance of Title Agreement with ILSRP, and;

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(iii) Any down payments or deposits are held in an escrow or trust account, or;

(iv) The developer then qualifies for exception (e)(3)(iii) or (iv) of this section.

(2) The Director may allow a developer, who has made sales prior to registration, to submit unaudited statements under the provisions of paragraph (j)(1)(i) of this section. The developer must demonstrate to the satisfaction of the Director that the acceptance of unaudited statements would not be a detriment to the public interest or to the protection of purchasers.

### § 1010.214 Recreational facilities.

(a) Submit a synopsis of the proposed plans and estimated cost of any proposed or partially constructed recreational facility disclosed in §1010.114. This item should include the general dimensions and a brief description of the facility but it should not include blueprints or similar technical materials.

(b) Submit a copy of any bond or escrow arrangements to assure completion of the recreational facilities disclosed in §1010.114 which are not structurally complete.

(c) Submit a copy of the lease for any leased recreational facility.

### § 1010.215 Subdivision characteristics and climate.

(a) Submit *two* copies of a current geological survey topographic map, or maps, of the largest scale available from the U.S. Geological Survey with an outline of the entire subdivision and the area included in this Statement of Record clearly indicated. Photo copies made by the developer are not acceptable. Do not shade the areas on the maps which have been outlined.

(b) If drainage facilities are proposed but not yet completed, submit a synopsis of the developer's proposed plans that includes a description of the system of collecting surface waters; a description of the steps to be taken to control erosion and sedimentation and the estimated cost of the drainage facilities.

(c) Submit copies of any bonds, escrow or trust accounts or other finan-

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cial assurance of completion of the drainage facilities.

(d) State whether the jurisdiction in which the subdivision is located has a system for rating the land for fire hazards.

### § 1010.216 Additional information.

(a) *Property Owners' Association.* (1) If the association has been formed as a legal entity, submit a copy of the articles of association, bylaws or similar documents, and a copy of the charter or certificate of incorporation.

(2) If the developer exercises any control over the association, state whether any contracts have been executed between the association and the developer or any affiliate or principal of the developer. If there have been, briefly summarize the terms of the contracts, their purpose, their duration and the method and rate of payment required by the contract. State whether the association may modify or terminate the contracts after the owners assume control of the association.

(3) State whether there is any agreement which would require the association to reimburse the developer, its affiliates or successors for any attorney's fees or costs arising from an action brought against them by the association or individual property owners regardless of the outcome of the action.

(4) If the answer to paragraph (a)(2) or (a)(3) of this section is in the affirmative, disclosure may be required in §1010.116(a) at the discretion of the Director.

(5) Submit a copy of any membership agreement or similar document.

(b) *Price range, type of sales and marketing.* (1) State the price range of lots in the subdivision.

(2) State the type of sales to be made, *i.e.*, contract for deed, cash, deed with security instrument, etc.

(3) Describe the methods of advertising and marketing to be used for the subdivision. The description should include, but need not be limited to, information on such matters as to:

(i) Whether the developer will employ his own sales force or will contract with an outside group;

(ii) Whether wide area telephone solicitation will be employed;